

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA-HQ-OAR-2004-0014: FRL-9131-9]

2060-AP73

**Prevention of Significant Deterioration (PSD) and Nonattainment  
New Source Review (NSR): Inclusion of Fugitive Emissions;  
Final Rule; Stay**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this final action, EPA is issuing a stay for 18 months of the inclusion of fugitive emissions requirements in the federal Prevention of Significant Deterioration (PSD) program published in the Federal Register on December 19, 2008, in the final rule entitled, "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Fugitive Emissions" ("Fugitive Emissions Rule"). The Fugitive Emissions Rule under the federal PSD program requires that fugitive emissions be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the Clean Air Act (Act or CAA). The existing stay is in effect for 3 months; that is, from December 31, 2009 until March 31, 2010. This action puts in place an additional stay for 18 months,

which we believe will allow for sufficient time for EPA to propose, take public comment on, and issue a final action concerning the inclusion of fugitive emissions in the federal PSD program.

**DATES:** Effective **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**, the following Code of Federal Registers sections are administratively stayed until **[INSERT DATE 18 MONTHS FROM DATE OF PUBLICATION IN FEDERAL REGISTER.]**: 40 CFR 51.165(a)(1)(v)(G), (a)(1)(vi)(C)(3), (a)(1)(ix), (a)(1)(xxviii)(B)(2), (a)(1)(xxviii)(B)(4), (a)(1)(xxxv)(A)(1), (a)(1)(xxxv)(B)(1), (a)(1)(xxxv)(C), (a)(1)(xxxv)(D), (a)(2)(ii)(B), (a)(6)(iii), (a)(6)(iv), and (f)(4)(i)(D); 40 CFR 51.166, (a)(7)(iv)(b), (b)(2)(v), (b)(3)(iii)(c), (b)(3)(iii)(d), (b)(20), (b)(40)(ii)(b), (b)(40)(ii)(d), (b)(47)(i)(a), (b)(47)(ii)(a), (b)(47)(iii), (b)(47)(iv), (r)(6)(iii) and (r)(6)(iv), and (w)(4)(i)(d); 40 CFR part 51, Appendix S, paragraphs II.A.5(vii), II.A.6(iii), II.A.9, II.A.24(ii)(b), II.A.24(ii)(d), II.A.30(i)(a), II.A.30(ii)(a), II.A.30(iii), II.A.30(iv), IV.I.1(ii), IV.J.3, IV.J.4, and IV.K.4(i)(d); and 40 CFR 52.21, (a)(2)(iv)(b), (b)(2)(v), (b)(3)(iii)(b), (b)(3)(iii)(c), (b)(20), (b)(41)(ii)(b), (b)(41)(ii)(d), (b)(48)(i)(a), (b)(48)(ii)(a), (b)(48)(iii), (b)(48)(iv), (r)(6)(iii), (r)(6)(iv), and (aa)(4)(i)(d).

**ADDRESSES:** Docket: All documents in the docket are listed in

the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1742, and the telephone number for the Air Docket is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Wheeler, Air Quality Policy Division, (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541-9771; fax number (919) 541-5509; or e-mail address: [wheeler.carrie@epa.gov](mailto:wheeler.carrie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

A. Does this action apply to me?

Entities potentially affected by this action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry Group	SIC <sup>a</sup>	NAICS <sup>b</sup>
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122
Petroleum Refining	291	324110
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510
Natural Gas Liquids	132	211112
Natural Gas Transport	492	486210, 221210
Pulp and Paper Mills	261	322110, 322121, 322122, 322130
Paper Mills	262	322121, 322122
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213
Pharmaceuticals	283	325411, 325412, 325413, 325414
Mining	211, 212, 213	21
Agriculture, Fishing and Hunting	111, 112,	11

- <sup>a</sup> Standard Industrial Classification
- <sup>b</sup> North American Industry Classification System.

Entities potentially affected by the subject rule for this proposed action also include state, local, and tribal governments.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule is also be available on the World Wide Web in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr>.

C. How is this preamble organized?

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That Significantly Affect Energy Supply, Distribution, or Use

I. National Technology Transfer and Advancement Act

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

K. Determination Under Section 307(d)

L. The Congressional Review Act

M. Basis for Making This Rule Effective on the Date of Publication

#### IV. Statutory Authority

## II. This Action

### A. Background

On December 19, 2008, the EPA (''we'') issued a final rule revising our requirements of the major NSR programs regarding the treatment of fugitive emissions (''Fugitive Emissions Rule''). 73 FR 77882. The final rule required fugitive emissions to be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the CAA. The final rule amended all portions of the major NSR program regulations: Permit requirements, the PSD program, and the emission offset interpretive ruling.

On February 17, 2009, the Natural Resources Defense Council submitted a petition for reconsideration of the December 2008 final rule as provided for in CAA 307(d)(7)(B).<sup>1</sup>

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<sup>1</sup> John Walke, NRDC, EPA-HQ-OAR-2004-0014-0060.

On April 24, 2009, we responded to the February 17, 2009 petition by letter indicating that we were convening a reconsideration proceeding for the inclusion of fugitive emissions challenged in the petition and granting a 3-month administrative stay of the rule contained in the federal PSD program at 40 CFR Parts 51 and 52. The letter also indicated that we would publish a notice of proposed rulemaking "in the near future" to address the specific issues for which we are granting reconsideration.<sup>2</sup>

The administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. See 74 FR 50115, FR Doc. E9-23503. As noted above, our authority under section 307(d)(7)(B) to stay a rule or portion thereof solely under the Administrator's discretion is limited to 3 months. An interim final determination was made to provide an additional stay for 3 months. This additional stay became effective on December 31, 2009. See 74 FR 65692.

#### B. Final Rule

In this final rule we are staying **the Fugitive Emissions Rule** for 18 months. As described above, the same provisions were administratively stayed for 3 months; however, that stay ended on December 30, 2009. To avoid a gap between the end of the stay and the proposed additional stay, an interim final determination was made to provide an additional stay for 3 months, ending on March 31, 2010. We believe the 18 month additional stay is needed and will provide adequate time for EPA to propose, take comment on, and issue a final action on issues

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<sup>2</sup> Lisa Jackson, U.S. EPA, EPA-HQ-OAR-2004-0014-0062

that are associated with the inclusion of fugitive emissions. Therefore, we are issuing this stay of the final Fugitive Emissions Rule in the federal PSD program at 40 CFR 51 and 52 for 18 months, until **[INSERT DATE 18 MONTHS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

### C. Comments and Responses

When we proposed this stay on February 11, 2010, we did not take comment on any substantive issues concerning the inclusion of fugitive emissions in the NSR program as stated in the Fugitive Emissions Rule. Comments sought were to be limited to the issue of whether to establish this additional stay and how long this stay would be. [75 FR 6823 at 6825].

We received three comments on the proposal for this additional stay of the Fugitive Emissions Rule. The first commenter supported the additional stay for "18 months, 24 months, or however long it takes for the current administration to reverse the rule and return to EPA's longstanding, lawful, and more protective approach."

One industry coalition commenter opposed the additional 18 month stay to "take substantive action and facilitate resolution of this significant permit applicability issue." Further, the commenter suggested that any delay "makes compliance with already complex PSD and NSR rules just that more difficult." No additional detail is provided regarding the difficulties with compliance for these rules. We agree with the industry coalition commenter that EPA should take substantive action to



facilitate resolution of this applicability issue. However, we believe that 18 months is necessary to allow EPA sufficient time to propose, take public comment on, and issue a final action concerning the inclusion of fugitive emissions in the federal PSD program. The commenter does not provide further details to demonstrate how this stay negatively impacts compliance. In our view, it is imperative the Fugitive Emissions Rule continue to be stayed while we undergo the reconsideration process to reduce confusion. If it is effective during this process and the Rule is ultimately changed, it would only further complicate compliance with PSD and NSR rules, an issue of concern for the commenter.

The final commenter did not comment specifically on the proposed additional stay, but instead stated that "further reconsideration is unnecessary." We believe this comment addresses the underlying substance of the Fugitive Emissions rule, which is beyond the scope of this action.

### **III. Statutory and Executive Order Reviews**

#### **A. Executive Order 12866: Regulatory Planning and Review**

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

#### **B. Paperwork Reduction Act**

This action does not impose an information collection

burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This action only issues a stay of the Fugitive Emissions Rule for 18 months.

However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0003 [EPA ICR No. 1230.21]. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is

a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any new requirements on small entities. We have determined that small businesses will not incur any adverse impacts because EPA is taking this action to propose an additional stay to the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions. No costs are associated with this amendment.

#### D. Unfunded Mandates Reform Act

This action does not contain a federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This action only proposes to put in place an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. This action only stays the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). This action will not impose any new obligations or enforceable duties on tribal governments. Thus, EO 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation.

This action is not subject to EO 13045 because this proposal only proposes to put in place an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions.

#### H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

#### I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA is not using any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address  
Environmental Justice in Minority Populations and Low-Income  
Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority and/or low income populations. This rule stays the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(J) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine."

L. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

M. Basis for Making This Rule Effective on the Date of Publication

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), generally provides that rules may not take effect earlier than 30 days after they are published in the Federal Register. However, EPA is issuing this final rule under section 307(d)(1) of the CAA, which states:

"The provisions of section 553 through 557 \* \* \* of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies."

Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on the date of publication. APA section 553(d)(3) provides an exception when the agency finds good cause exists for a period less than 30 days before effectiveness. We find good cause exists to make this rule effective upon publication. A gap between the current stay that ends on March 31, 2010 and the effective date of this stay could result in administrative and regulatory confusion if the stayed provisions came back into effect, only to be stayed again a short time later. In order to avoid this potential gap, this rule is effective upon publication.

#### **IV. Statutory Authority**

The statutory authority for this action is provided by section 301(a) of the CAA as amended (42 U.S.C. 7601(a)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

#### **List of Subjects**

##### **40 CFR Part 51**

Administrative practices and procedures, Air pollution control, Carbon Monoxide, Fugitive Emissions, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile Organic compounds.



## **40 CFR Part 52**

Administrative practices and procedures, Air pollution control, Carbon Monoxide, Fugitive Emissions, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile Organic compounds.

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Dated: March 24, 2010.

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Lisa P. Jackson,  
Administrator.

For the reasons discussed in the preamble, the EPA amends 40 CFR parts 51 and 52 as follows:

**PART 51—[AMENDED]**

1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401– 7671q.

**§ 51.165 [Amended]**

2. Effective **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**, 40 CFR 51.165(a) (1) (v) (G), (a) (1) (vi) (C) (3), (a) (1) (ix), (a) (1) (xxviii) (B) (2), (a) (1) (xxviii) (B) (4), (a) (1) (xxxv) (A) (1), (a) (1) (xxxv) (B) (1), (a) (1) (xxxv) (C), (a) (1) (xxxv) (D), (a) (2) (ii) (B), (a) (6) (iii), (a) (6) (iv), and (f) (4) (i) (D) are stayed until **[INSERT DATE 18 MONTHS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

3. Effective **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]** through **[INSERT DATE 18 MONTHS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, amend 40 CFR 51.165 to add paragraph (a) (4) to read as follows:

**§ 51.165 Permit requirements.**

(a) \* \* \*

(4) Each plan may provide that the provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emission to the extent quantifiable are considered in

calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or citric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;

(xx) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

\* \* \* \* \*

**§ 51.166 [Amended]**

4. Effective **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**, 40 CFR 51.166 (a) (7) (iv) (b), (b) (2) (v), (b) (3) (iii) (c), (b) (3) (iii) (d), (b) (20), (b) (40) (ii) (b), (b) (40) (ii) (d), (b) (47) (i) (a), (b) (47) (ii) (a), (b) (47) (iii), (b) (47) (iv), (r) (6) (iii) and (r) (6) (iv), and (w) (4) (i) (d) are stayed until March 31, 2010.

5. Effective **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**

through [INSERT DATE 18 MONTHS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend 40 CFR 51.166 to add paragraph

(i) (1) (ii) to read as follows:

**§ 51.166 Prevention of significant deterioration of air quality.**

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(ii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

\* \* \* \* \*

## **Appendix S to 40 CFR Part 51**

**[Amended]**

6. Effective **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**, 40 CFR part 51, Appendix S, paragraphs II.A.5(vii), II.A.6(iii), II.A.9, II.A.24(ii)(b), II.A.24(ii)(d), II.A.30(i)(a), II.A.30(ii)(a), II.A.30(iii), II.A.30(iv), IV.I.1(ii), IV.J.3, IV.J.4, and IV.K.4(i)(d) are stayed until **[INSERT DATE 18 MONTHS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

7. Effective **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]** through **[INSERT DATE 18 MONTHS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, amend Appendix S to part 51 to add II.F to read as follows:

### **Appendix S to Part 51—Emission Offset Interpretative Ruling**

\* \* \* \* \*

II. \* \* \*

*F. Fugitive emission sources.* Section IV.A. of this Ruling shall not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any following categories:

- (1) Coal cleaning plants (with thermal dryers);
- (2) Kraft pulp mills;

- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;
- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plants;
- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;



(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(27) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

\* \* \* \* \*

#### **PART 52—[AMENDED]**

8. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### **§ 52.21 [Amended]**

■ 9. Effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER], 40 CFR 52.21, (a) (2) (iv) (b), (b) (2) (v), (b) (3) (iii) (b), (b) (3) (iii) (c), (b) (20), (b) (41) (ii) (b), (b) (41) (ii) (d), (b) (48) (i) (a), (b) (48) (ii) (a), (b) (48) (iii), (b) (48) (iv), (r) (6) (iii), (r) (6) (iv), and (aa) (4) (i) (d) are stayed until [INSERT DATE 18 MONTHS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

10. Effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]

through [INSERT DATE 18 MONTHS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], amend 40 CFR 52.21 to add (i)(1)(vii) to read as follows:

**§ 52.21 Prevention of significant deterioration of air quality.**

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(vii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act; or

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